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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,659	10/31/2003	James A. Leistra	03-292	4437

34704 7590 11/17/2006

BACHMAN & LAPOINTE, P.C.  
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SUITE 1201  
NEW HAVEN, CT 06510

EXAMINER
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TSOY, ELENA

ART UNIT	PAPER NUMBER
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1762

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/698,659

Applicant(s)

LEISTRA ET AL.

Examiner

Elena Tsoy

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-40 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **Election/Restrictions**

1. Claims 1 and 25 are generic to a plurality of disclosed patentably distinct species of:

(A) **positions of a peroxide decomposition catalyst**: (i) in an anode (Claims 1, 19, 25); (ii) in a cathode (Claims 1, 19, 25); (iii) in a layer between the anode and a membrane (Claims 1, 11-12, 13, 25); (iv) in a layer between a cathode and a membrane (Claims 1, 13, 25); (v) in a membrane (Claims 16-18, 25); (vi) in both the anode and the cathode (Claims 2-21); adjacent to the anode (Claim 24);

(B) **support**: (i) oxides of Ru, Sn, Si, Ti, Zr, Al, Hf, Ta, Nb and Ce, Mn (Claims 4, 28); (ii) zeolites (Claims 4, 28), (iii) carbon (Claims 4, 9, 28); (iv) combinations thereof (Claims 4, 28);

(C) **means of depositing a peroxide decomposition catalyst**: (i) ex-situ mixing (Claims 29, 30); (ii) ex-situ swelling (Claims 29, 31); (iii) ex-situ depositing as a catalyst precursor (Claims 29, 32); (iv) ex-situ impregnating (Claims 29, 33); (v) ex-situ uniform distribution (Claims 29, 34); (vi) ex-situ non-uniform distribution (Claims 29, 35-36); (vii) (Claim 29); (viii) in-situ depositing (Claim 39-40).

2. Claims 5, 25 are generic to a plurality of disclosed patentably distinct species of

**positions of an oxygen reduction catalyst**: (i) in an anode; (ii) in a cathode ; (iii) in a layer between the anode and a membrane; (iv) in a layer between a cathode and a membrane (Claims 5, 7).

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3. Claims 6, 38 are generic to a plurality of disclosed patentably distinct species of an **oxygen reduction catalyst**: (i) oxides of Ru, Sn, Si, Ti, Zr, Al, Hf, Ta, Nb and Ce, Mn; (ii) zeolites, (iii) carbon; (iv) combinations thereof.

4. Applicant is required under 35 U.S.C. 121 to elect a **single disclosed species**, even though this requirement is traversed.

5. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

6. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

7. A telephone call was made to Mr. George A. Coury on November 13, 2006 to request an oral election to the above restriction requirement, but did not result in an election being made.

8. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elena Tsoy whose telephone number is 571-272-1429. The examiner can normally be reached on Monday-Thursday, 9:00AM - 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tim Meeks can be reached on 571-272-1423. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ELENA TSOY  
PRIMARY EXAMINER  
*ETsoy*

Elena Tsoy  
Examiner  
Art Unit 1762

November 13, 2006